

In this resolution, the mentions of the affected entity have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected entity, the physical persons affected could also be identified.

File identification

Archive resolution of the previous information no. IP 121/2021, referring to Waters of (...)

Background

1. On 03/24/2021, the Catalan Data Protection Authority received a letter from a person in which he filed a complaint against Aigües de (...), a public service provider, with reason for an alleged breach of the regulations on the protection of personal data .

In particular, the complainant stated that on 16/03/2021 he was attended to at the offices of Aigües de (...), located at (...), where he went to solve an incident of that same day with the water supply in his private home. In this regard, the complainant states that when he was attended to by the person serving the public, he *"got nervous and ended up shouting on more than one occasion"*, and also went to the office of the person in charge of office to *"express your disagreement with the facts"*. As a result of this incident, the complainant adds that he noticed that the worker who had attended to him at first was talking on the phone, and from this he infers that *"this lady had called the 112 emergency number"*. In this regard, the person making the complaint complains that when he returned to his job within the police force, one of his bosses, specifically "(...)", asked him about the events that had happened to the Aigües de (...) office, and informed him that he had become aware of it through a call from a third police officer who, in turn, had received a direct call from the Aigües de (...) worker reporting the facts and identifying the person making the complaint here by name and surname.

The person reporting here complains that the Aigües de (...) worker made use of his personal data (name and surname), to which he had access due to his job at the offices of the entity, to identify him and explain the events that occurred to an officer of the police force through an *"unofficial"* way. Also, he adds that, during the procedure at the Aigües de (...), *"at no time did he say that he was a Mosso d'Esquadra Police, but that maybe someone recognized him as such."*

2. The Authority opened a preliminary information phase (no. IP 121/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts were susceptible to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 22/06/2021, the reported entity was required to, among others, present the account of the events reported, and the circumstances that led to the person who served the person here denouncing to call "112", and if in the framework of the call the person here denouncing was identified through his first and last name.

4. On 07/07/2021, Aigües de (...) responded to the aforementioned request through a letter in which it stated the following:

- That " *On March 16, 2021, the public service worker at the Aigües de (...) offices located at (...) of (...) attended to a user who was very disturbed by a problem with the water. Seeing that the problem was not being solved the way he wanted, this user got up from the table and went to the office of the Head of the Office. He opened the door, without knocking, and started insulting him (calling him "son of a bitch"). At that time, the worker called 112 and said: "I'm calling from the water service office of (...), to inform you that there is a very disturbed person in the office and you we ask you to send a patrol of cops". At no time was this user's name or profession revealed .* "
- That " *This user, after insulting the head of the office, returned to the table of the public service worker and agreed to solve the problem as, from Aigües de (...), I proposed to him. While the worker attended to this user, they called 112 to verify that they needed the help of the Mossos and were told that the person had already calmed down and that there was no need to send anyone. "* "

5. On 04/26/2022, also during this preliminary information phase, the Authority's Inspection Area, by means of an office dated 04/11/2022, required the reporting person to within 10 working days, provide the information relating to the name and surname of the person who, at the time of the reported events, held the position of "(...)", as well as the address of their workplace, for in order to be able to collect his testimony about the facts reported, since the reported entity denied having carried out any improper treatment of his personal data. In the same office, the reporting person was informed that it was essential to have this information to be able to continue the inspection actions.

6. In response to this request, on 05/02/2022, the complainant submitted a letter in which he identified the person who held the position of "(...)" at the time of the events reported, in through his TIP number (...) and the job he currently held as "(...)" at the police station of (...).

7. On 09/13/2022, the Authority requested more information from the reported entity about the reported facts. In this respect, the entity was required to confirm whether when the worker called 112 on the emergency telephone (when she called or when she received the 112 call), she did not identify at any time the talk to the person reporting here by first and last name. Also, to report on whether any employee of the entity telephoned the police to expose the events that took place at the Aigües de (...) office and identify the person making the complaint by name and surname.

8. On 09/27/2022 , Aigües de (...) complied with this requirement by means of a letter stating the following:

- That " *We confirm that when the employee of Aigües de (...) SA spoke on the 112 emergency telephone (when she called or when she received the 112 call), she did not at any time identify the talk to the person through first and last name. "* "
- That " *There is no record that any employee of Aigües de (...), SA telephoned the police to explain what happened, identifying the person by name and surname. "* "

The reported entity provided, among other documents, the statement of the employee who attended the day of the events reported to the complainant here, and which includes, among others, the following:

- who did not identify the reporting person in the call to "112" (*" only i go say there was a man in the office who was a lot altered _ in chief moment they asked me more data about this person or me I facilitated them "*) ;
- who only reported the " *incident* " to the head of the office (*" only to the head of the office , who witnessed it like I did , in the first person "*);
- that all the people in the office (clients and workers) could witness and hear them facts happened (*" Yes, there was others users _ They heard everything , as the tone he used was high and, moreover , the office of the head of the office it is next to the chairs where they are expected the users ."*).

9. On 09/28/2022, also in the context of this preliminary information phase, the inspector diligently conducted the telephone conversation he had with (...) with no. TIP (...) of the police station of Mossos d'Esquadra of (...), in order to obtain his testimony about the facts reported, when he held the position of "(...)". In this regard, the witness states the following:

- That on the date of the events reported, he received a call from an agent of the Mossos d'Esquadra body, who explained to him that he had learned through a worker from Aigües de (...), that the person the complainant here has caused an incident at the offices of said entity.
- That he does not remember the first and last name or the TIP number of the Mossos d'Esquadra agent who called him to inform him about the events reported.

Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Catalan Authority of Data Protection, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the Director of the Authority is competent to issue this resolution Catalan Data Protection Authority.

The reported data processing falls within the competence of the Authority under the provisions of article 3.f) of Law 32/2010, to the extent that this processing would have been carried out within the framework of the provision of a public service that provides Water from (...).

2. Based on the background story, it is necessary to analyze the reported events that are the subject of this archive resolution.

The person making the complaint here complains, specifically, that a person working for Aigües de (...) had access to his personal data (name and surname) in connection with the professional tasks he carried out in the offices of entity, and made improper use of them when he used them, in the course of an " *Unofficial* " telephone conversation with a police officer, by identifying him as the cause of the incident that took place that morning in the Water departments of (...). The police officer who received the alleged call, in turn, would

have called the hierarchical superior of the complainant, the (...) from the police station, who would have finally asked him for explanations and narrated the whole call line

In relation to what has been said, it should be noted that the complainant places the alleged initial telephone conversation between the employee of Aigües de (...) and the police officer, in a private setting, alien therefore that of a police complaint where it is obvious that the person making the complaint must provide as much data and information as is available about the criminal act.

For its part, Aigües de (...), denies the facts reported. In this respect, the entity has maintained, from the beginning, that the employee who attended to the person making the complaint on the day of the events, only made a call to the emergency telephone "112" to report the incident that was taking place in the office, but did not identify the person who authored the incident, by name or surname. Nor did he do it when they called the organization from "112" to ask if they were sending a police patrol to the office. Likewise, the entity also denies that any of its workers had made the controversial direct call to a police officer, which is the option that the complainant indicated in his complaint.

In this respect, taking into account the two versions of the events that happened, this Authority required the testimony of the person who, at the time of the reported events, held the position of (...) at the police station where the complainant here worked and that he would have informed him that he had received a call from a police officer explaining to him the events that had taken place at the Aigües de (...) offices. This witness confirmed that he had received a call from a fellow police officer to explain to him that a worker from Aigües de (...) had called him and identified the complainant here as the person who authored an incident at the organization's offices. However, the (...) did not remember the name of the police officer who called him to give him this information.

At this point, it was essential to know the identity of the policeman who would have had the controversial conversation with the Aigües de (...) employee in order to continue with the investigations and, specifically, to require him to testify about the controversial call. Indeed, and without questioning that the (...) was informed by telephone by a fellow policeman about the events that took place in the organization's offices, the information available is not sufficient to prove in a reliable way the circumstances in which the alleged initial call between the Aigües de (...) worker and the policeman would have taken place, not even that it took place, or even less that it was the origin of the possible leakage of data relating to the name and surname of the complainant in relation to the incident at the Aigües de (...) offices.

In this regard, it must be emphasized that the nature of the information disclosed cannot be considered a sufficient indication of a possible leakage of this data by a person employed by Aigües de (...), given that not only its staff and the reporting person could be aware of it. So when the (...) states that he received a call from a colleague in the police force, although it allows us to infer that the author of this call knew the identity of the person making the complaint here and the events that took place in the offices of Aigües de (...), it is also true that they were data that the said police officer could also have known from third parties, and not necessarily from a person working at Waters of (...).

Thus, it cannot be ruled out that he could have obtained the information through other clients who were waiting to be served at the entity's office, who witnessed the entire incident, and who could have recognized the complainant, and communicate this information themselves, or through a family member or friend, to the police officer who made the call to (...), or

perhaps he himself, only with the physical description of the complainant could have identified the professional colleague and neighbor of the municipality.

That being the case, it must be taken into account that the sanctioning administrative procedure is particularly guarantor because of the consequences that can be derived from it. That is why it is necessary, for its initiation, the existence of evidentiary elements or sufficient rational indications that allow the commission of an offense to be imputed to the reported entity, elements that do not apply in the case under examination .

It cannot be ignored that the penal administrative law applies, with some nuance but without exceptions, the inspiring principles of the criminal order, resulting in the full virtuality of the principles of presumption of innocence and *in dubio pro reo* in the area of sanctioning authority, which shifts the burden of proving the facts and their authorship to the accuser. In short, the presumption of innocence must always rule without exception in the penal system and must be respected in the imposition of any penalty.

Therefore, based on the right to the presumption of non-existence of administrative responsibility, until the contrary is proven (art. 53.2.b LPAC), the filing of the present proceedings proceeds.

3. In accordance with everything that has been set out in the 2nd legal basis, and since during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts that have been addressed in this resolution, any fact that could be constitutive of any of the infractions provided for in the legislation on data protection, it is necessary to agree to its archive.

Article 10.2 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, provides that "(...) *no charges will be drawn up and the dismissal of the file and the archive of actions when the proceedings and the tests carried out prove the non-existence of infringement or responsibility. This resolution will be notified to the interested parties*". And article 20.1) of the same Decree determines that the dismissal proceeds: "*c) When the existence of responsibility has not been proven, or its extinction has occurred.*"

Therefore, I resolve:

1. Archive the previous information actions number IP 121/2011, relating to Waters of (...)
2. Notify this resolution to Aigües de (...) and the person making the complaint.
3. Order the publication of the resolution on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the persons interested parties may file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after their notification, in accordance with what provided for in article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the

administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998 , of July 13, governing the contentious administrative jurisdiction.

Likewise, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,

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